

14 September 2023

## **IC-252516-K2J5**

### **Request**

You asked us:

*"I request, under FOI, all and any ICO internal emails and policies relating to the ICO 6-week "deadline". I also request details of how many complaints have been rejected by the ICO in the last five years due to this rule. I also request details of the reasonable adjustments (as defined by the Equality Act 2010) that are made in relation to this 6 week deadline, to cater for the needs of people declaring that they have a disability."*

This was with regards to the requirement for Freedom of Information Act complaints to be submitted without undue delay, defined by ourselves as six weeks after the last meaningful correspondence with the public authority in question.

We received your request on 17 August 2023.

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

### **Our response**

I can confirm that we hold some information in scope of your request.

Please find attached the internal emails we hold related to the undue delay requirement. You will note that some information has been redacted – this includes some internal email addresses, which have been withheld under section 31 of the FOIA, one paragraph under section 42, and some correspondence specific to complaints brought by individuals, which have been withheld under section 40(2). Further information on these exemptions can be found below.

Regarding the number of cases closed due to undue delay, there are currently 362 cases on our systems which have been closed with the reason given as 'undue delay'. This includes cases that were closed prior to when the undue delay timeframe was changed from three months to six weeks, which occurred in April 2023. The number of cases closed with the reason given as undue delay since that change is 166.

To provide some further guidance on the change to the time limit, this occurred after a public consultation. Further information on this can be found on our document [Delivering a better FOI service: Responses to the consultation on a prioritisation framework for handling FOI/EIR complaints](#).

Finally, regarding your request for details on reasonable adjustments, we do not hold any specific policies relating to this, as any decisions on reasonable adjustments are based on the individual circumstances of a request. It should be noted that the six-week undue delay timeframe is not an absolute policy – we can and have used discretion with regards to this timescale based on mitigating circumstances. You will note from the correspondence disclosed that there have been circumstances in which the six-week timescale requirement has been waived, though the specifics of why have been withheld under s40(2) for reasons explained below. You may also find our [reasonable adjustments policy](#) useful.

## **Information withheld**

### **FOIA section 31(1)(g)**

We have withheld some internal email addresses under section 31(1)(g) of the FOIA. We can do this when the disclosure of information "*would, or would be likely to, prejudice...the exercise by any public authority of its functions for any of the purposes specified in subsection (2).*"

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c):

*" a. the purpose of ascertaining whether any person has failed to comply with the law, and*

*c. the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise."*

Misuse of internal email addresses that exist to support ICO staff would likely prejudice our ability to perform our regulatory functions. Disclosure would leave

us vulnerable to phishing or other cyber-attacks, spam, or an increased volume of irrelevant correspondence which it would take us time to process.

There are other channels that the public can use to contact us, and they are publicly available via [our website](#).

The exemption at section 31(1)(g) is not absolute. When considering whether to apply it in response to a request for information, there is a 'public interest test'. We have to consider whether the public interest favours withholding or disclosing the information.

In this case the public interest factor in favour of disclosing the information is:

- Increased transparency in the way in which the ICO conducts its operations.

The public interest factors in maintaining the exemption are as follows:

- Internal email addresses being used inappropriately will reduce the effectiveness and efficiency of our regulatory functions.
- The information of primary relevance to your request is not affected by the redaction of these particular internal email addresses.
- The public interest in transparency is met by the public provision of other more appropriate means of contacting us.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

## **FOIA section 40(2)**

You will see that some third party personal data has been redacted in our response. It is exempt under section 40(2) of the FOIA.

This information in particular consists of sensitive information shared by the complainants over the course of our handling of their complaints.

Disclosure of this data would break the first principle of data protection - that personal data is processed lawfully, fairly and in a transparent manner.

There is no strong legitimate interest that would override the prejudice that disclosure would cause to the rights and freedoms of the individuals concerned. So we are withholding the information under section 40(2) of the FOIA.

## **FOIA section 42**

Some of the information you have requested is subject to legal professional privilege and is exempt from disclosure under section 42 of the FOIA. Section 42(1) of the FOIA states:

*"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."*

There are two types of privilege covered by the exemption at section 42. These are:

- Litigation privilege; and
- Advice privilege.

Litigation privilege covers confidential communications between the client and lawyer made for the purpose of preparing for existing or anticipated legislation. Advice privilege covers such communications when they're made for the purpose of seeking or giving legal advice. We find that the information in scope of your request is subject to advice privilege.

Section 42 is not an absolute exemption, so we must consider whether the public interest favours withholding or disclosing the information.

In this case the public interest factors in disclosing the information are:

- Increased transparency in the way in which the ICO comes to decisions and how legal advice affects our policies.

The factors in withholding the information are:

- Legal professional privilege is a fundamental aspect of the legal system, and the in-built public interest in withholding information carries a significant weight which must be considered. It is not in the public interest to undermine it without good reason.
- There is a clear public interest in the ICO receiving full and frank legal advice prior to making policy decisions, to inform their decision making. Disclosing such advice to the public risks limiting this.

Having considered these factors, we are satisfied that it is appropriate to withhold this information.

## Next steps

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint through our website](#).

## Your information

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

Yours sincerely



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